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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,712	04/02/2004	Dennis Piper	AFF014USPT02	1186
23403 7590 01/05/2007 SHERRILL LAW OFFICES 4756 BANNING AVE SUITE 212 WHITE BEAR LAKE, MN 55110-3205			EXAMINER LINDSEY, RODNEY M	
			ART UNIT 3765	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
2 MONTHS		01/05/2007	PAPER	

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/816,712
Filing Date: April 02, 2004
Appellant(s): PIPER ET AL.

MAILED

JAN 05 2007

Group 3700

Michael S. Sherrill
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 6, 2006 appealing from the Office action mailed April 6, 2006 and the reply brief filed September 22, 2006. This is also a substitute for the Examiner's Answer mailed August 17, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

The rejection of claims 2-4, 10 and 11 as obvious over Mattes (4,741,054) in view of Gwon (4,068,323).

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The rejection of claims 1-4 and 6-12 as anticipated by Gwon (4,068,323).

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

1,638,756	WALLMAN	8-1927
3,171,133	STEFFEN	3-1965
4,068,323	GWON	1-1978
4,279,037	MORGAN	7-1981
4,741,054	MATTES	5-1988
6,397,399	LAMPE ET AL.	6-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5-9, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Morgan. With respect to claim 1 note the headguard of Figure 1 with the pad “protector 29”, retention element “headstrap 15” and the diametrically intersecting circumferential lines of retention defined by headstraps 15, 16. With respect to claim 5 note Figure 1 and the proximate temple location of the diametric points of intersection of the lines of retention defined by the

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headstraps 15, 16. With respect to claim 6 note that the line of retention defined by strap 15 would be above the occipital bone while that defined by strap 16 would be below the occipital bone as shown in Figure 1. With respect to claim 7 note the angular adjustment afforded the straps 15, 16 by the connection at slots 23 and therefore the angular adjustment of the circumferential lines of retention. With respect to claim 8 the capacity for angular adjustment noted with respect to claim 7 also allows for circumferential shifting of the diametric points of intersection as claimed. With respect to claim 9 note the headguard of Figure 1 with the pad "protector 29" and retention elements "headstraps 15, 16". With respect to claim 12 note the length adjustment means "cable 25". With respect to claim 13 note Figure 1 and the proximate temple location of the diametric points of intersection of the lines of retention defined by the headstraps 15, 16.

Claims 1, 6, 9 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Mattes '054. With respect to claim 1 note the headguard shown in Figure 1 with the pad "headgear 12", retention element "strap 20" and the diametrically intersecting circumferential lines of retention defined by straps 20, 26. With respect to claim 6 note that the line of retention defined by strap 20 would be above the occipital bone while that defined by strap 26 would be below the occipital bone as shown in Figure 1. With respect to claim 9 note the headguard shown in Figure 1 with the pad "headgear 12" and retention elements "straps 20, 26". With respect to claim 12 note length adjustment means 24, 28.

Claim 20 is rejected under 35 U.S.C. 102(b) as being anticipated by Wallman.

Note the headguard or "head dress" at 10, 11 protective of a wearer's hairstyle and comprising front protective piece 10, rear protective piece 11 and pivot points as at 21. the head dress as

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much functions to protect the wearer from a blow to the head as does the instant headguard as claimed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mattes '054 in view of Gwon. With respect to claims 2, 3, 10 and 11 Mattes '054 does not teach the use of elastic as claimed. In Gwon note with respect to claim 2 column 3, line 21 and the elastic strap 16, with respect to claim 3 the strap 16 and with respect to claims 10 and 11 the use of elastic material in forming the straps 16, 19 (see column 3, line 21). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the headguard of Mattes '054 by forming the straps as at 20, 26 of elastic material in the manner of Gwon to allow stretching of the straps to enhance the fit of the headguard. With respect to claim 4 note the length adjustment means as at 24, 28 of Mattes '054.

Claims 14-16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steffen in view of Lampe et al. '399. With respect to claims 14 and 18 Steffen shows a headguard "helmet 10" with a front protective piece 12, a rear protective piece 18, a retention element "elastic strap 22" and the front and rear protective pieces comprising a pad 50 in a pocket defined by covering 52. Steffen does not teach the use of a plurality of separate pads or specifically three separate pads in the pocket of the front or rear protective piece. Lampe et al.

teach that the use of three separate pads 6 in the front pocket of a headguard. It would have been obvious to substitute the plurality of pads 6 of Lampe et al. for the single pad 50 of Steffen to achieve the advantage enhancing the ability of the front protective piece to conform by “relative shifting” to the contour of the head. With respect to claim 15 note the use of an elastic strap 22 (see column 3, line 2 of Steffen). With respect to claim 16 note the strap 22 of Steffen. With respect to claim 19 Lampe et al. additionally teach individual pockets 8 for each pad (see Figure 4). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the cover of Steffen with individual pockets for the pads to achieve the advantage of enhancing the retention of an individual pad in a position relative to the head to improve the fit of the headguard.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steffen in view of Lampe et al. ‘399 as applied to claim 14 above, and further in view of Mattes ‘054. Steffen does not teach the use of adjustment means on the straps. Mattes ‘054 teach the use of adjustment means 24, 28 on straps 20, 26. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the straps 22, 24, 26, 28 of Steffen with the adjustment means 24, 28 of Mattes ‘054 to achieve the advantage of enabling length adjustment of the straps.

(10) Response to Argument

In response to appellant’s arguments drawn to the rejection based on Morgan, the strap 15 of Morgan is maintained to clearly possess a circumferential line of retention as broadly claimed with the lines of retention of straps 15, 16 lying in diametrically intersecting planes. Appellant’s arguments drawn to the embodiment shown in Figures 8 and 9 of Morgan are of no

moment as such embodiment is not being relied upon. Note also that the claims 1, 5-9, 12 and 13 do not require that the lines of retention be continuous about a circumference even though the connecting parts “ear guards 11, 12” in fact make continuous the lines of retention defined by straps 15, 16.

In response to appellant’s arguments drawn to Mattes ‘054 and Mattes ‘054 in view of Gwon, the presence of the open crown in Mattes ‘054 is in no way seen to negate the circumferential lines of retention defined by the straps 20, 26. Note that the mere limitation of “circumferential” is not seen to require that the lines of retention “encircle” or be “around” the head when worn (see the instant specification at paragraphs [0030] and [0031] and specifically the use of “i.e.” and “encircle”). Further, clearly the straps and therefore the circumferential lines of retention intersect as shown clearly in Figure 1.

In response to appellant’s arguments drawn to Wallman, Wallman is maintained to teach each structural element set forth in claim 20. In further response the instant invention may likewise be characterized as being decorative, while the device of Wallman in light of the hairpiece can also be characterized as being protective.

In response to appellant’s arguments drawn to the combination of Steffen and Lampe et al. ‘399 and the combination of Steffen, Lampe et al. ‘399 and Mattes ‘054, the implication by appellant that one of ordinary skill in the art at the time of the invention would not expect to be successful with using multiple pieces of padding at the rear of the headguard just as taught at the front of the headguard, is not well taken. The fact that more smaller pad pieces would enable better conforming of the headguard to a user’s head would be true regardless of a rearward or frontal location of the pad pieces.

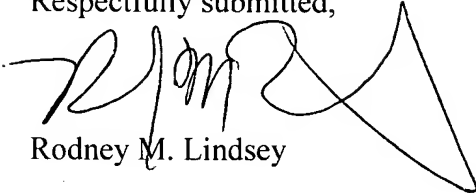
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

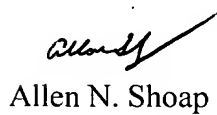


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